S.B. CIVIL WRIT PETITION NO.696/2005

Mangi Lal Rathi vs. Union of India and others

Date : 4.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.P. Joshi, for the petitioner.

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REPORTABLE

Heard learned counsel for the petitioner.

The petitioner was served with a notice (Annex.5) under Section 68H(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the “Act”). The petitioner challenged the said notice by filing writ petition before this Court being S.B. Civil Writ Petition No.2399/2000. Vide order dated 16.8.2000, notices were issued to the respondents to show cause as to why the writ petition may not be admitted and an interim order was passed that if any order is passed during the pendency of the petition, it shall be subject to the decision of the writ petition.

It will be worthwhile to mention here that the petitioner submitted a second stay petition as the competent authority passed the order on 14.8.2000 forfeiting the petitioner’s property. In the writ petition this Court passed an interim order to maintain status quo. Before that, the competent authority decided the case of the petitioner finally on 11.8.2000.

On 18.3.2002, the petitioner sought permission to withdraw the writ petition with liberty to pursue the remedy in accordance with law. The writ petition was, therefore, dismissed as withdrawn with liberty.

According to learned counsel for the petitioner, the petitioner sought liberty because of the fact that after the notice dated 11.2.2000, the competent authority passed the final order and, therefore, the petitioner in hope that he will get relief in appeal, withdrew the said writ petition and preferred appeal before the Appellate Tribunal for Forfeiture of Property, New Delhi. Copy of appeal is also placed on record as Annex.11. In appeal, on application of the petitioner seeking permission for admission of additional evidence, the appellate tribunal allowed time to the competent authority to file comments. After considering the comments of the Additional Commissioner to the admission of the additional evidence, the appellate authority by order dated 28.11.2001, directed competent authority to submit finding on the basis of evidence already on record within a period of two months from the date of order. While remitting the matter, the appellate authority directed the competent authority to give an opportunity of hearing to the petitioner's counsel. In the order dated 28.11.2001, the appellate authority further observed that, "Though it is not mandatory to furnish the copy of the reasons recorded, we have held in several appeals that it would be prudent to serve the copy of the reasons recorded on the affected person." The

competent authority also showed his no objection so far as giving of copy of reasons to the petitioner was concerned. In this manner, the matter was remanded to the competent authority. Copy of reasons were supplied to the petitioner.

The petitioner submitted one more application for admitting certain documents in evidence before the competent authority on 25.5.2004 (Annex.14). The petitioner prayed that the documents mentioned in the application may be admitted as additional evidence before the appeal is argued. The appellate authority considered the petitioner's said application and thereafter vide order dated 1.9.2004 (Annex.15) directed the competent authority to give his finding on the additional evidence within three months. Copies of additional evidence accepted by the appellate authority were directed to be sent to the competent authority.

It appears from application Annex.16 that after narrating all the facts about documents which were sought to be produced by the petitioner or the documents which are relied upon by the petitioner before the competent authority, the competent authority prayed that permission may be granted to summon the creditors as mentioned in the application and time may be extended for completing proceeding and for giving findings after investigating the facts.

It will be worthwhile to mention here that in the

application (Annex.16) submitted by the competent authority, there is a reference of two sets of documents – one consisting of 8 documents and another consisting of 19 documents.

The petitioner in the backdrop of these facts preferred this writ petition on the ground that the proceedings against the petitioner have been initiated by issuing notice (Annex.5) is without jurisdiction. According to learned counsel for the petitioner, the petitioner faced the criminal proceedings under the Act of 1989 and the petitioner was acquitted on 18.11.1991 by the Court. Chapter-VA has been inserted in the Act by the Act NO.2 of 1989 and it is with effect from 29.5.1989 whereas the offence with which the petitioner was charged in criminal case was of 15.4.1988. According to learned counsel for the petitioner, since it is a matter relating to the offence of the year 1988 and Chapter-VA itself came into force in the year 1989, therefore, no proceedings could have been initiated under this Chapter.

Learned counsel for the petitioner further submits that Section 68A of the Act provides that the Chapter shall apply only to the persons specified in sub-section (2) of Section 68A and in view of Section 68A(2), no proceedings can be initiated against the person who has already been acquitted by the Court from the charges levelled against him.

The next ground raised by the petitioner is that the proceedings were initiated in the year 2000 and the matter is pending before the appellate authority. The matter was remitted twice by the appellate authority to the competent authority. The appellate authority directed competent authority to complete the proceedings initially by order dated 28.11.2001 within a period of two months from the date of order and subsequently, vide order dated 1.9.2004 within a period of three months. Despite limiting the time by the appellate authority, the competent authority is seeking time to decide the matter and thereby the petitioner is dragged to a litigation for which no proceedings could have been initiated against the petitioner and this amounts to abuse of process of law.

I have considered the submission of learned counsel for the petitioner.

The petitioner initially challenged the notice dated 11.2.2000 by preferring writ petition no.2399/2000 before this Court. This Court while issuing notice on 16.8.2000 passed an interim order and permitted the competent authority to pass the final order though it was made subject to the decision of the writ petition. The said writ petition was withdrawn by the petitioner so that the petitioner may prefer appeal to challenge the final order passed during the pendency of the said writ petition. The petitioner availed remedy by preferring appeal instead of pursuing with the writ petition. The appeal is pending

before the appellate authority.

It appears from the facts mentioned above itself that the matter was remitted by the appellate authority on the application of the petitioner himself vide order dated 28.11.2001. The petitioner again submitted an application seeking permission to produce additional evidence before the appellate court on 25.5.2004 only. The petitioner obtained order from appellate authority only on 6.9.2004. The competent authority, after careful examination of the documents sought to be used as additional evidence by the petitioner and after narrating the facts in detail, submitted an application before the appellate authority and sought permission to summon creditors so that it may pass appropriate orders in pursuance of the directions issued by the appellate authority.

The facts referred above clearly reveals that if the petitioner had a grievance against the initiation of the proceedings by issuing notice under Section 68H(1) of the Act, then the petitioner might be well justified in filing writ petition no.2399/2000. The petitioner himself withdrew the said writ petition and sought permission from this Court to challenge the action of the respondents by filing appeal before the appellate authority. That permission was granted by this Court and, thereafter, the petitioner preferred appeal before the appellate authority and submitted to the jurisdiction of the appellate authority. The petitioner himself chose the forum to challenge the

action of the competent authority firstly by filing writ petition but withdrew it. If the notice under challenge was without jurisdiction and could have been challenged by the petitioner than the petitioner even after availing that remedy thought it proper to prefer appeal. In these circumstances, it is clear that firstly the petitioner himself opted to challenge the initiation of the proceedings before the appellate authority by withdrawing the earlier writ petition. Therefore, it is now too late for the petitioner to say that the notice dated 11.2.2000 may be quashed by this Court holding it to be without jurisdiction despite the fact that the matter is sub-judice before the appellate authority.

The facts referred above further clearly reveal that the matter was remitted by the appellate authority to the competent authority on the applications filed by the petitioner himself and the proceedings were not delayed by the competent authority. The last order of remit dated 1.9.2004 was also obtained by the petitioner wherein the appellate authority directed the competent authority to give finding on additional evidence. If the competent authority submitted an application before the appellate authority seeking permission to summon the witnesses so as to record a finding on the additional evidence of the petitioner, the competent authority appears to have not delayed the proceedings but proceeded in a lawful manner to decide the issue which was remitted to it by the appellate authority.

Therefore, there is no substance in the petitioner's contention that the proceedings are being delayed by the competent authority and the petitioner is subjected to any abuse of process of Court.

In view of the above discussion, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya